

1 SENATE BILL NO. 67

2 INTRODUCED BY R. LAIBLE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE BOARD OF PUBLIC EDUCATION FROM
5 IMPLEMENTING ANY RULE, POLICY, OR STANDARD THAT WILL HAVE A SUBSTANTIAL FINANCIAL
6 IMPACT ON A SCHOOL DISTRICT UNTIL THE LEGISLATURE APPROPRIATES MONEY TO FUND
7 IMPLEMENTATION OF THE RULE, POLICY, OR STANDARD; AMENDING SECTIONS 1-2-113, 20-2-121, AND
8 20-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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10 WHEREAS, in drafting Article X, section 1(3), of the 1972 Montana Constitution, which requires that the
11 Legislature provide and fund its share of the cost of a basic system of free quality public elementary and
12 secondary schools, Delegates Harbaugh and Habedank explain, in the Montana Constitutional Convention,
13 Verbatim Transcripts, Volume VI, pages 1961 through 1963, that the intent of the provision is to impose upon the
14 Legislature the responsibility to fund a minimum or basic program determined or established by the Legislature;
15 and

16 WHEREAS, Article XI, section 11, of the 1889 Montana Constitution vested general control and
17 supervision of the state university system and the various other state educational institutions in one state board
18 of education whose powers and duties were prescribed by the Legislature; and

19 WHEREAS, in adopting Article X, section 9, of the 1972 Constitution, the framers revised the 1889
20 provision by purposely creating a Board of Regents of Higher Education vested with "full power, responsibility,
21 and authority to supervise, coordinate, manage and control the Montana university system" and a separate Board
22 of Public Education with the authority to "exercise general supervision over the public school system and such
23 other public educational institutions as may be assigned by law" and to perform other duties provided by law; and

24 WHEREAS, in the Montana Constitutional Convention, Verbatim Transcripts, Volume VI, page 2097,
25 delegate Champoux, in explaining the differences between the language of the old provision and the proposed
26 new provision, specifically addresses the intent of the framers to alleviate the fears of local school boards by
27 eliminating the word "control" from the provision and vesting in the new Board of Public Education authority to
28 "supervise" the public education system and other educational institutions "as provided by law"; and

29 WHEREAS, the language of Article X, section 9, of the 1972 Montana Constitution, as approved by the
30 electorate, clearly vested in the Board of Regents full power, responsibility, and authority to manage and "control"

1 the Montana university system and reduced the newly created Board of Public Education's role over public
 2 education to one of "general supervision", while "supervision and control" was specifically vested in local school
 3 boards in Article X, section 8; and

4 WHEREAS, the plain meaning of Article X, section 9, of the 1972 Montana Constitution, along with the
 5 transcript of the 1972 Constitutional Convention, supports a conclusion that the Board of Public Education's
 6 authority did not equal that vested in the Board of Regents over higher education but rather restricted the Board's
 7 authority over primary and secondary public education to one of "general supervision" while reserving
 8 "supervision and control" of public schools to the local school district trustees; and

9 WHEREAS, in *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989), the
 10 Montana Supreme Court ruled that the accreditation standards adopted by the Board of Public Education by rule
 11 constitute "the minimum standards upon which a quality education must be built" but do not fully define either the
 12 constitutional rights of students or the constitutional responsibilities of the state for funding its public schools; and

13 WHEREAS, in 1992, a District Court decision in *Montana Board of Public Education v. State* (Cause No.
 14 BDV-91-1072, First Judicial District, 1992), held that Article X, section 9(3), of the 1972 Montana Constitution
 15 provided the Board of Public Education with "constitutional rule-making authority" which is "self-executing and
 16 independent of any power that is delegated to the Board by the legislature"; and

17 WHEREAS, despite this clear intent to limit the authority of the Board of Public Education to one of
 18 "general supervision" and to reserve for the Legislature a role in determining the "basic program", a combined
 19 reading of the 1989 Montana Supreme Court school funding decision and the 1992 District Court decision has,
 20 in effect, reduced the Legislature's role to one of "financier" by stripping it of any meaningful role in shaping the
 21 basic system of public education.

22

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24

25 **Section 1.** Section 1-2-113, MCA, is amended to read:

26 **"1-2-113. Statutes or board of public education rules, policies, or standards imposing new duties**
 27 **on a school district to provide -- means of financing or specific appropriation required prior to**
 28 **implementation.** (1) Any law enacted by the legislature that requires a school district to perform an activity or
 29 provide a service or facility ~~and~~ that will require the direct expenditure of additional funds or any rule, policy, or
 30 standard adopted by the board of public education that will require the direct expenditure of additional funds must

1 provide a specific means or have an appropriation to finance the activity, service, ~~or~~ facility, rule, policy, or
 2 standard other than the existing property tax mill levy. Any law that fails to provide a specific means to finance
 3 the activity, service, or facility or any rule, policy, or standard for which money is not appropriated is not effective
 4 until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

5 (2) Financing must be by means of a remission of money or appropriation by the state for the purpose
 6 of funding the activity, service, or facility or specifically implementing a board rule, policy, or standard. Financing
 7 must bear a reasonable relationship to the actual cost of performing the activity, ~~or~~ providing the service or facility,
 8 or implementing the rule, policy, or standard.

9 (3) Legislation passed and approved may not supersede or modify any provision of this section, except
 10 to the extent that the legislation expressly does so.

11 (4) This section does not apply to any law under which the required expenditure of additional funds by
 12 the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing
 13 program."
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15 **Section 2.** Section 20-2-121, MCA, is amended to read:

16 **"20-2-121. Board of public education -- powers and duties.** (1) The board of public education shall:

17 ~~(1)~~(a) effect an orderly and uniform system for teacher certification and specialist certification and for the
 18 issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and
 19 20-4-111;

20 ~~(2)~~(b) consider the suspension or revocation of teacher or specialist certificates and appeals from the
 21 denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

22 ~~(3)~~(c) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

23 ~~(4)~~(d) adopt and enforce policies to provide uniform standards and regulations for the design,
 24 construction, and operation of school buses in accordance with the provisions of 20-10-111;

25 ~~(5)~~(e) adopt policies prescribing the conditions when school may be conducted on Saturday and the
 26 types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions
 27 of 20-1-303 and 20-1-304;

28 ~~(6)~~(f) adopt standards of accreditation and establish the accreditation status of every school in
 29 accordance with the provisions of 20-7-101 and 20-7-102;

30 ~~(7)~~(g) approve or disapprove educational media selected by the superintendent of public instruction for

1 the educational media library in accordance with the provisions of 20-7-201;

2 ~~(8)(h)~~ adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

3 ~~(9)(i)~~ adopt rules for issuance of documents certifying equivalency of completion of secondary education

4 in accordance with 20-7-131;

5 ~~(10)(j)~~ adopt policies for the conduct of programs for gifted and talented children in accordance with the
6 provisions of 20-7-903 and 20-7-904;

7 ~~(11)(k)~~ adopt rules for student assessment in the public schools; and

8 ~~(12)(l)~~ perform any other duty prescribed from time to time by this title or any other act of the legislature.

9 (2) (a) The board of public education may not implement any rule, policy, or standard that will have a
10 substantial fiscal impact on a school district until the legislature appropriates money to fund implementation of
11 the rule, policy, or standard.

12 (b) Prior to adoption or amendment of any rule, policy, or standard, the board shall submit each proposal
13 to the education and local government interim committee for review. The committee shall request a fiscal analysis
14 to be prepared by the office of budget and program planning. The analysis must be used in the preparation of
15 the executive budget.

16 (c) If the fiscal analysis of the proposal is found by the office of budget and program planning to have
17 a substantial fiscal impact, the board may not implement the proposed rule, policy, or standard until the legislature
18 appropriates money, as required under 1-2-113, to fund implementation of the proposed rule, policy, or standard.
19 A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district
20 program."

21

22 **Section 3.** Section 20-7-101, MCA, is amended to read:

23 **"20-7-101. Standards of accreditation.** (1) Standards of accreditation for all schools must be adopted
24 by the board of public education by rule upon the recommendations of the superintendent of public instruction.

25 (2) ~~Prior to~~ The adoption or amendment of any accreditation standard; is subject to the requirements in
26 20-2-121(2). ~~the~~ The board shall submit each proposal to the education and local government interim committee
27 for review. The interim committee shall request a fiscal analysis to be prepared by the office of budget and
28 program planning legislative fiscal division. ~~The legislative fiscal division shall provide its analysis to the interim~~
29 ~~committee and to the office of budget and program planning to be used in the preparation of the executive budget.~~

30 ~~(3) If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial~~

1 ~~fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session~~
2 ~~and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal~~
3 ~~impact is an amount that cannot be readily absorbed in the budget of an existing school district program.~~

4 ~~(4)(3)~~ Standards for the retention of school records must be as provided in 20-1-212."

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6 **NEW SECTION. Section 4. Effective date -- applicability.** [This act] is effective on passage and
7 approval and applies to any rule, policy, or standard adopted by the board of public education on or after [the
8 effective date of this act].

9 - END -